

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

**JUDITH MOORING for  
KRISTEN D. MOORING**

**PLAINTIFF**

v.

**Civil No. 04-5029**

**JO ANNE B. BARNHART, Commissioner,  
Social Security Administration**

**DEFENDANT**

**O R D E R**

**Plaintiff Judith Mooring appealed the Commissioner's denial of benefits to this court.**

**On March 3, 2005, judgment was entered reversing the decision of the Administrative Law Judge and remanding plaintiff's case to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g).**

**On June 13, 2005, plaintiff moved for approval of attorney's fees and costs under 28 U.S.C. § 2412, the Equal Access to Justice Act (EAJA), in the amount of \$2,643.20, representing 19.75 hours of service at the rate of \$125.00 per hour and \$174.45 in costs. Defendant has filed a response, expressing no objection to this award.**

**Pursuant to 28 U.S.C. § 2412(d)(1)(A), the court must award attorney's fees to a prevailing social security claimant unless the Commissioner's position in denying benefits was substantially justified. The burden is on the Commissioner to show substantial justification for the government's denial of benefits. *Jackson v. Bowen*, 807 F.2d 127, 128 (8th Cir. 1986). After reviewing the file, we find plaintiff is a prevailing party in this matter. Under *Shalala v. Schaefer*, 509 U.S. 292, 302, 113 S.Ct. 2625, 125 L.Ed.2d 239 (1993), a social**

security claimant who obtains a sentence-four judgment reversing the Commissioner's denial of benefits and remanding the case for further proceedings is a prevailing party.

Plaintiff requests attorney's fees under EAJA at an hourly rate of \$125.00. In the past, the statutory hourly rate under EAJA was \$75.00 which could be upwardly adjusted to account for an increase in the cost of living since October 1, 1981, the effective date of EAJA as originally enacted, or a special factor such as the limited availability of qualified attorneys. *Kelly v. Bowen*, 862 F.2d 1333, 1336 (8th Cir. 1988); 28 U.S.C. § 2412(d)(2)(A). The Contract with America Advancement Act of 1996, passed on March 29, 1996, amended EAJA and increased the statutory ceiling for EAJA fee awards from \$75 to \$125 per hour. See Public Law 104-121, § 232(b)(1). The \$125.00 rate applies to civil actions filed on or after the enactment date. *Id.* § 233. Consequently, we find that plaintiff's counsel is entitled to compensation at an hourly rate of \$125.00.

#### CONCLUSION

Based on the above, we hereby award an attorney's fee under EAJA of \$2,468.75, representing 19.75 hours at a rate of \$125.00 per hour, plus \$174.45 in costs, for a total award of \$2,643.20. This amount should be paid in addition to, and not out of, plaintiff's past due benefits.

IT IS SO ORDERED this 6<sup>th</sup> day of September 2005.

/s/Beverly Stites Jones  
HON. BEVERLY STITES JONES  
UNITED STATES MAGISTRATE JUDGE